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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,742	01/30/2004	John Christopher Fuhr	1718.002US1	4906

21186 7590 02/02/2007
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EXAMINER

GILBERT, WILLIAM V

ART UNIT	PAPER NUMBER
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3635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/768,742

Applicant(s)

FUHR, JOHN CHRISTOPHER

Examiner

William V. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

This is a First Action on the Merits. Claims 1-27 are pending and examined as set forth below.

Claim Objections

1. Claims 9, 10 and 18 are objected to because of the following informalities: applicant claims improperly a combination of a joist with the ledger element but does not properly claim the joist. The phrase of Claim 8 (from which Claims 9 and 10 depend) "adapted to hold a plurality of joists," and the phrase of Claims 17 (from which Claim 18 depends), "adapted to receive a joist" is an intended use of the invention, but not an actual claim of a joist. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and

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distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "the ledger board" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 8, 11-19 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson (U.S. Patent No. 3,875,712).

Claim 1: Thompson discloses an apparatus having a first frame member (Figure 2, element 28), a second frame member (15), the first member having a spacing element (Figure 4, element 25).

Claim 2: the spacing element (25) is a lip.

Claim 3: the spacing element includes a connector (41).

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Claim 4: the lip (25) is positioned so that the first surface (Figure 4, 25) and second surface (15) are coplanar.

Claim 7: a fastener (used by holes 52a and 18a).

Claim 8: the spacing element (25) is attached to a wall (Figure 1 where 13 is connected to wall of trailer) and adapted to hold a plurality of joists (Figure 1, element 25).

Claim 11: a plurality of spaced ledges (Figure 4, elements 41, side opposite end of 41) which correspond to the spacing between the plurality of joists.

Claim 12: a flashing element (Figure 2, element 52) attached to an edge of a framing member most distant from the spacing element.

Claim 13: the flashing element is integral with the first frame member at an edge most distant from the spacing element.

Claim 14: Thompson discloses a ledger with a first edge (Figure 4, element 33), a second edge (31) and a spacing element (36) associated with the first edge.

Claim 15: a flashing element (52) associated with the second edge (31).

Claim 16: the phrase "adapted for...edifice," lines 1 and 2, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed

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invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 17: the spacing element (236) has a built in pocket (33,36,43). The phrase "adapted to receive a joist," line 2, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 18: the spacing element (36) includes a support surface (33) between first and second edges of a joist (22 and 18), and the support surface is parallel to the first and second edges.

Claim 19: the spacing element (36) includes a support surface (41) coplanar with the first edge (22) of the joist.

Claim 27: Thompson discloses placing a first frame member (25) with respect to a second frame member (15) where the first frame member has a spacing device (36), temporarily attaching (20, 41) the first and second frame members and permanently attaching the frame members (52a, 18a).

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Claims 1, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Zamerovsky (U.S. Patent No. 5,533,310).

Claim 1: Zamerovsky discloses an apparatus having a first frame member (Figure 2, element 24a) a second frame member (22b) and a spacing element (31) on the first member.

Claim 8: the frame member is attached to a wall (Column 3, lines 5-10). The phrase "adapted to hold a plurality of joists" line 3, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 10: the joists (26) are made of wood.

Claims 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Daniels (U.S. Patent No. 4,313,688).

Claim 20: Daniels discloses a method for supporting a deck comprising placing a non-wood element (Figure 1, element 21) below an existing wood ledger (22) and attaching the non-wood element (21) to the wood ledger and structural component (second board parallel and attached to 22) that the existing wood element was attached.

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Claim 22: the non-wood element (21) has an extended lip (Figure 8, element 35) that supports the wood ledger (22) and portion of joist (second board parallel and attached to 22).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of Horn (U.S. Patent No. 3,875,707).

Claim 5: Thompson discloses the claimed invention except for an adhesive that attaches the first and second frame members. Horn discloses a metal frame for a deck (Figure 3) where the metal pieces are adhered by welding (e.g. Column 3, lines 24-26). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use welding to adhere the first and second members in Thompson in order to strengthen the connection between the frame

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members as it is well known in the art that a weld produces a bond that is stronger than the metals that are bonded.

Claim 6: Thompson discloses a fastener (used in conjunction with 52a) to fasten the first and second frame members.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of Parisien (U.S. Patent No. 5,483,773).

Claim 9: Thompson discloses the claimed invention including that the frame is metal, but does not disclose that the frame is aluminum. Parisien discloses a frame made of aluminum (Abstract). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the metal frame in Thompson of aluminum because of its density properties and it is well known in the art to use aluminum in building frames.

Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniels in view of Parisien (U.S. Patent No. 5,483,773).

Claim 21: Daniels discloses the claimed invention except that the non-wood element (24) is made of aluminum. Parisien discloses a frame made of aluminum (Abstract). It would have

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been obvious at the time the invention was made to a person having ordinary skill in the art to make the non-wood element in Daniels of aluminum because of its density properties and it is well known in the art to use aluminum in such elements.

Claim 23: Daniels discloses placing a sleeve (21) over an existing post (23) associated with a deck, but does not disclose the sleeve is made of aluminum. Parisien discloses a frame made of aluminum (Abstract). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make sleeve in Daniels of aluminum because of its density properties and it is well known in the art to use aluminum in such elements.

Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniels.

Claim 24: Daniels discloses the claimed invention including a wood post (23) and a non-wood post (24). Daniels does not disclose replacing an existing post with a non-wood post. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to replace the wood post in Daniels with the non-wood post because non-wood posts typically have a longer life span than wood posts and are not subject to rot over time.

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Claim 25: the non-wood post (24) includes a post and sleeve (21).

Claim 26: the non-wood post includes a flange (Figure 10 element 38).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Horn (U.S. Patent No. 3,875,707), Spence (U.S. Patent No. 6,695,541), Beane (U.S. Patent No. 5,617,689).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571.272.6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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